IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

MICAH ALAN COX,

                         Petitioner,   :   Case No. 3:13-cv-200

    - vs -   District Judge Thomas M. Rose
                                       Magistrate Judge Michael R. Merz

ROD JOHNSON, WARDEN,
  Madison Correctional Institution,
                 .   :
                Respondent.

DECISION AND ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION FOR DISCOVERY AND AN EVIDENTIARY HEARING

This habeas corpus case is before the Court on Petitioner's Motion for Discovery and an Evidentiary Hearing (Doc. No. 6). The substance of the Motion is a request that State's Exhibit 1 and the entire trial transcript be filed with the Court or that an evidentiary hearing be granted.

Petitioner does not describe State's Exhibit 1 but says it is needed

> to support my claim that Exhibit #1 was played in it's [sic] entirety un-redacted, to show that my criminal history was talked about in full detail, not just a mere passing statement. Also to show that my trial counsel was ineffective for not objecting to Exhibit #1 admission and how I was prejudiced by Exhibit #1.

(Doc. No. 6, PageID 164).

Because Petitioner had pled an insufficient evidence ground for relief, the Court will require the entire trial transcript to be filed. This Court assumes from Petitioner's partial description that State's Exhibit #1 is a recording of some type, video or audio. The Respondent

is ordered to furnish this Court with the original or a certified accurate copy of State's Exhibit #1 and to furnish Petitioner with the same. Petitioner claims that State's Exhibit 1 was played un-redacted and is presumably asserting that the playing took place in the presence of the jury. Respondent's counsel shall ascertain whether or not this is reflected in the trial transcript.

Petitioner's Motion for an Evidentiary Hearing is DENIED without prejudice to its renewal when it is determined what was the true state of the record transmitted to the Second District Court of Appeals.

August 2, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge